

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER



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BRIAN C. McNEIL
EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION

DATE: JULY 9, 2001

DOCKET NO: T-03903A-00-0511

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Dwight Nodes. The recommendation has been filed in the form of an Opinion and Order on:

LOOKING GLASS NETWORKS, INC.
(CC&N/FACILITIES-BASED)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

JULY 18, 2001

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

JULY 24, 2001 AND JULY 25, 2001

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602)542-4250.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 WILLIAM A. MUNDELL
CHAIRMAN

3 JIM IRVIN
COMMISSIONER

4 MARC SPITZER
COMMISSIONER

5
6 IN THE MATTER OF THE APPLICATION OF
7 LOOKING GLASS NETWORKS, INC. FOR A
8 CERTIFICATE OF CONVENIENCE AND
9 NECESSITY TO PROVIDE COMPETITIVE
FACILITIES-BASED AND RESOLD LOCAL
EXCHANGE, INTEREXCHANGE, AND ACCESS
TELECOMMUNICATIONS SERVICES.

DOCKET NO. T-03903A-00-0511

DECISION NO. _____

OPINION AND ORDER

10 DATE OF HEARING: June 25, 2001

11 PLACE OF HEARING: Phoenix, Arizona

12 ADMINISTRATIVE LAW JUDGE: Dwight D. Nodes

13 APPEARANCES: Ronald W. Del Sesto, SWIDLER BERLIN SHEREFF
14 FRIEDMAN, LLP, on behalf of Looking Glass
Networks, Inc.;

15 Teena Wolfe, Staff Attorney, Legal Division, on behalf
16 of the Utilities Division of the Arizona Corporation
Commission.

17 **BY THE COMMISSION:**

18 Having considered the entire record herein and being fully advised in the premises, the
19 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

20 **FINDINGS OF FACT**

21 1. On July 14, 2000, Looking Glass Networks, Inc. ("LGN" or "Applicant") filed with
22 the Commission an application for a Certificate of Convenience and Necessity ("Certificate") to
23 provide competitive facilities-based and resold local exchange, interexchange, and access
24 telecommunications services in Arizona.

25 2. LGN is a Delaware corporation, authorized to do business in Arizona.

26 3. On May 24, 2001, LGN filed Affidavits of Publication indicating compliance with the
27 Commission's notice requirements.

28 4. On April 5, 2001, the Commission's Utilities Division Staff ("Staff") filed its Staff

1 Report, which recommended approval of the application and included a number of additional
2 recommendations.

3 5. On April 27, 2001, a Procedural Order was issued setting the matter for hearing on
4 June 25, 2001.

5 6. A hearing was held on June 25, 2001, at which Applicant and Staff presented
6 evidence. At the hearing, Staff made several minor changes to the Staff Report recommendations.

7 7. Qwest and LGN have not yet negotiated an interconnection agreement, although LGN
8 expects that such agreement will be completed in the near future.

9 8. The management of LGN has many years of experience in the telecommunications
10 industry.

11 9. Applicant has the technical capability to provide the services that are proposed in its
12 application.

13 10. Currently there are several incumbent providers of local exchange, toll, and exchange
14 access services in the service territory requested by Applicant, and numerous other entities have been
15 authorized to provide competitive local exchange services in all or portions of that territory.

16 11. It is appropriate to classify all of Applicant's authorized services as competitive.

17 12. The Staff Report stated that Applicant has no market power and the reasonableness of
18 its rates would be evaluated in a market with numerous competitors.

19 13. According to Staff, LGN submitted unaudited financial statements for the year ending
20 February 28, 2001. These financial data list assets of \$82.85 million, total equity of \$68.94 million,
21 retained earnings of negative \$11.34 million, and net income of negative \$2.30 million with zero
22 sales revenue. Based on this information, Staff believes that LGN lacks sufficient financial strength
23 to offer the requested telecommunications services in Arizona absent the procurement of a
24 performance bond.

25 14. Staff recommends, as amended, that LGN's application for a Certificate to provide
26 competitive facilities-based and resold telecommunications services be granted subject to the
27 following conditions:

28 (a) unless it provides services solely through the use of its own facilities, LGN

1 should be ordered to procure an Interconnection Agreement before being
2 allowed to offer local exchange service;

3 (b) LGN should be ordered to file with the Commission, within 30 days of an
4 Order in this matter, its plan to have its customers' telephone numbers included
5 in the incumbent's Directories and Directory Assistance databases;

6 (c) LGN be ordered to pursue permanent number portability arrangements with
7 other LECs pursuant to Commission rules, federal laws and federal rules;

8 (d) LGN be ordered to abide by and participate in the AUSF mechanism instituted
9 in Decision No. 59623, dated April 24, 1996 (Docket No. RT-T-03905A-00-
10 0513E-95-0498);

11 (e) Applicant be ordered to abide by the quality of service standards that were
12 approved by the Commission for USWC in Docket No. T-0151B-93-0183;

13 (f) in areas where Applicant is the sole provider of local exchange service
14 facilities, LGN be ordered to provide customers with access to alternative
15 providers of service pursuant to the provisions of Commission rules, federal
16 laws and federal rules;

17 (g) LGN be ordered to certify, through the 911 service provider in the area in
18 which it intends to provide service, that all issues associated with the provision
19 of 911 service have been resolved with the emergency service providers within
20 30 days of an Order in this matter;

21 (h) LGN be ordered to abide by all the Commission decisions and policies
22 regarding CLASS services;

23 (i) LGN be ordered to provide 2-PIC equal access;

24 (j) LGN be required to certify that all notification requirements have been
25 completed prior to a final determination in this proceeding;

26 (k) LGN be required to notify the Commission immediately upon changes to its
27 address or telephone number;

28 (l) LGN be ordered to comply with all Commission rules, orders, and other
requirements relevant to the provision of intrastate telecommunications
service;

(m) LGN be ordered to maintain its accounts and records as required by the
Commission;

(n) LGN should be ordered file with the Commission all financial and other
reports that the Commission may require, and in a form and at such times as
the Commission may designate;

(o) LGN maintain on file with the Commission all current tariffs and rates, and
any service standards that the Commission may require;

(p) LGN should be ordered to cooperate with Commission investigations of
customer complaints;

(q) LGN be ordered to participate in and contribute to a universal service fund, as

required by the Commission; and

(r) In order to protect LGN's customers:

- (1) LGN should be ordered to procure a performance bond equal to \$100,000. The minimum bond amount of \$100,000 should be increased if at any time it would be insufficient to cover prepayments or deposits collected from LGN's customers;
- (2) that if the Applicant desires to discontinue service, it should file an application with the Commission pursuant to A.A.C. R14-2-1107;
- (3) that the Applicant should be required to notify each of its customers and the Commission 60 days prior to filing an application to discontinue service pursuant to A.A.C. R14-2-1107; and any failure to do so should result in forfeiture of the Applicant's performance bond;
- (4) that proof of the performance bond should be docketed within 90 days of an Order in this matter or 30 days prior to the provision of service, whichever comes first, and must remain in effect; however,
- (5) if, at some time in the future, the Applicant's financial outlook improves, Staff recommends that the Applicant be allowed to file a request for cancellation of its established performance bond. Such request should be accompanied by information demonstrating the Applicant's financial viability. Upon receipt of such filing and after Staff review, Staff will forward its recommendation to the Commission.

15. Staff further recommended that LGN's tariffs be approved on an interim basis subject to the following:

- (a) That LGN file tariffs in accordance with this Decision within 30 days of an Order in this matter or within 30 days of an Order approving its interconnection agreement, whichever is later;
- (b) That LGN should be required to file in this Docket, within 18 months of the date it first provides service following certification, sufficient information for Staff analysis and recommendation for a fair value finding, as well as for an analysis and recommendation for permanent tariff approval. This information must include, at a minimum, the following:
 1. A dollar amount representing the total revenue for the first twelve months of telecommunications service provided to Arizona customers by LGN following certification, adjusted to reflect the maximum rates that LGN has requested in its tariff. This adjusted total revenue figure could be calculated as the number of units sold for all services offered times the maximum charge per unit.

- (c) LGN's failure to meet the condition to timely file sufficient information for a fair value finding and analysis and recommendation of permanent tariffs should result in the expiration of the Certificate of Convenience and Necessity and of the tariffs.

17. On August 29, 2000, the Court of Appeals, Division One, (“Court”) issued its Opinion in U S West Communications, Inc. vs. Arizona Corporation Commission, 1 CA-CV 98-0672, holding that “the Arizona Constitution requires the Commission to determine fair value rate bases for all public service corporations in Arizona prior to setting their rates and charges.”

CONCLUSIONS OF LAW

- DECISION NO.

4. A.R.S. § 40-282 allows a telecommunications company to file an application for a Certificate to provide competitive telecommunications services.

5. Pursuant to Article XV of the Arizona Constitution as well as the Arizona Revised Statutes, it is in the public interest for Applicant to provide the telecommunications services set forth in its application.

6. Applicant is a fit and proper entity to receive a Certificate authorizing it to provide competitive facilities-based and resold local exchange, interexchange, and exchange access telecommunications services in Arizona as conditioned by Staff's recommendations as modified below.

7. The telecommunications services that the Applicant intends to provide are competitive within Arizona.

8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules, it is just and reasonable and in the public interest for Applicant to establish rates and charges which are not less than the Applicant's total service long-run incremental costs of providing the competitive services approved herein.

9. Staff's recommendations in Findings of Fact Nos. 14 and 15 are reasonable and should be adopted.

ORDER

IT IS THEREFORE ORDERED that the application of Looking Glass Networks, Inc. for a Certificate of Convenience and Necessity for authority to provide competitive facilities-based and resold local exchange, and exchange access telecommunications services in Arizona shall be, and is hereby, granted, as conditioned herein.

IT IS FURTHER ORDERED that Looking Glass Networks, Inc. shall be ordered to procure a performance bond equal to \$100,000. The minimum bond amount of \$100,000 shall be increased if, at any time, it would be insufficient to cover prepayments or deposits collected from the Applicant's customers.

IT IS FURTHER ORDERED that Looking Glass Networks, Inc. shall comply with all of the Staff recommendations set forth in Findings of Fact Nos. 14 and 15.

1 IT IS FURTHER ORDERED that Looking Glass Networks, Inc. shall file with the
2 Compliance Section of the Utilities Division a letter indicating the date on which it will begin
3 providing service at least 60 days prior to providing service.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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7 CHAIRMAN

COMMISSIONER

COMMISSIONER

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9 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
10 Secretary of the Arizona Corporation Commission, have
11 hereunto set my hand and caused the official seal of the
12 Commission to be affixed at the Capitol, in the City of Phoenix,
13 this ____ day of _____, 2001.

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15 BRIAN C. McNEIL
16 EXECUTIVE SECRETARY

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DISSENT _____
DDN:mlj

1 SERVICE LIST FOR: LOOKING GLASS NETWORKS, INC.

2 DOCKET NO.: T-03903A-00-0511

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